It is submitted that the attitude of the majority of the Wisconsin court, is the more tolerant and the more wholesome. Though the purpose of the contested law be most praiseworthy, though it express the keen desires of a progressive community, the remonstrant who relies upon the constitution is entitled to a respectful hearing.

With the struggle between capital and labor growing more acrimonious, and with the increase of reform legislation of doubtful constitutionality, the future looms bright for the first amendment.

B. W.

JUDGMENTS—RELIEF IN EQUITY AGAINST JUDGMENTS AT LAW.—The power of equity to relieve against judgments at law when fraudulently obtained or where some strong natural equity can be alleged against them, although it is at the present day so firmly established, was violently resisted by the common law lawyers and judges. Fraud being the original attaching point of equity jurisdiction, it was natural that one of the very first subjects to engage the attention of the English chancellors was that of equitable interference with a judgment of a law court obtained by fraud. The question whether a court of equity could give relief for or against a judgment at common law was the subject of the famous controversy in the reign of James I, which was conducted principally by Lord Coke against, and by Lord Ellesmere in favor of, the chancery jurisdiction, and which was finally decided in favor of the latter.[1] From that time down to this day the jurisdiction has been repeatedly exercised by courts of equity and it remains only to consider under what circumstances they will act and what is the nature of the relief.

At the outset it is well to remember that judgments are not reversed or vacated in equity. The adjudications at law are not overhauled or re-examined. It is to the party himself that the energies of the court of equity are directed and its remedial power is exercised by placing restraint upon his usual right to follow up his judgment by the appropriate process for its collection. Equity therefore acts on the person in this, as in all matters; and while it will enjoin the enforcement of a judgment in a proper case, it will not interfere with the judgment itself.[2] Cases sometimes arise where the right to move for a new trial at law was lost in consequence of some of the circumstances which equity always regards

[1] I Story's Equity, Sec. 51.

[2] Harding v. Fiske, 12 N. Y. Supp. 139 (1890); Justice v. Scott, 39 N. C. 108 (1845). But equity may reform a judgment, by the addition of something omitted through mistake, when due cause therefor is shown, Hamburg Ins. Co. v. Pelzer Co., 76 Fed. 479 (1896).

as sufficient warrant for its interference. The language employed in the decisions with respect to the granting of new trials in equity in such cases, or the compelling of a party to submit to a new trial, is often misleading, in that it produces the impression that the verdict and judgment at law are vacated and set aside and the case there taken up and retried. Nothing of the kind occurs. The court of equity, when it grants relief, does not vacate or otherwise disturb the judgment at law.[3] If it finds that with respect to some issues presented in the action at law, the complainant ought not to be concluded by the judgment in that action, and that such issues ought to be tried anew, it will require the defendant to submit to the re-trial thereof.[4] But this re-trial does not take place in the original action at law. The chancery court merely orders the issue to be tried as other issues out of chancery are tried, enjoining enforcement of the judgment during the meantime, and when so tried the result is certified to it for its final action.[5]

The power which the law courts have assumed in modern times in controlling their own judgments and in opening and vacating judgments upon equitable grounds,[6] although it does not affect the concurrent jurisdiction of courts of equity to grant relief, has, nevertheless, lessened the number of occasions upon which equity will interfere with proceedings at law.[7] For on the principle that equity will not grant relief where there is an adequate remedy at law, it is generally held that equitable relief will not be given if the party can be equally well relieved by motion or other proceeding in the original action.[8] So while courts of equity have uniformly refused their aid in all cases where their action would involve either the usurpation of appellate jurisdiction or the granting of a second opportunity of presenting a cause upon the merits, they have, on the other hand, uniformly extended their relief to two well defined

[3] Knifong v. Hendricks, 2 Grat. 212 (Va. 1845); Givens' Appeal, 121 Pa. 260 (1888).

[4] Equity will not set aside a judgment at law on grounds which were presented to the trial court in a motion for a new trial and held insufficient. Telford v. Brinkerhoff, 163 Ill. 439 (1896); Hendrickson v. Bradley, 85 Fed. 508 (1898).

[5] Wynne v. Newman, 75 Va. 811 (1881).

[6] In Pennsylvania a judgment remains within the control of the common law court during the term, and ends with the term. Any further control is exercised by the same court vested with equitable powers and applying equitable principles. Boyd v. Kirch, 234 Pa. 432 (1912); Jaffe v. Cooperman, 231 Pa. 237 (1911).

[7] Metcalf v. Williams, 104 U. S. 93 (1881); Froebrich v. Lane, 45 Ore. 13 (1904).

[8] Dilworth Co. v. Kidney, 43 Pa. Super. 625 (1910); Hussey v. Gourley, 153 Ill. App. 501 (1910), Clark v. Bayonne B. E., 76 N. J. Eq. 326 (1909); Flanagan v. McNutt, 113 N. Y. Supp. 42 (1908).

[9] Freeman on Judgments, Sec. 488.

classes of cases, with the objective that no man should retain an unconscionable advantage procured in a court of law through his own fraud, or through some excusable mistake or unavoidable accident on the part of his adversary. The relief of equity in such cases is grounded in the fact that a party could not, for certain reasons, successfully prosecute his claim nor make his defense in the original action. Those reasons naturally form the division of the two classes: first, all those cases in which a defense or prosecution could not be made on account of the fraud or act of the adversary; second, all those cases where a party failed to present his side of the controversy because of some unavoidable accident.[9]

In both these classes of cases courts of equity have undoubted jurisdiction to grant relief against a judgment at law under many and different circumstances which we will not here discuss. However, the important point to observe is that in either class of case, the power of equity to interfere is founded, not alone upon the presence of fraud in the one case or of unavoidable accident in the other, but upon the additional presence of some original ground of equitable relief, namely, the injustice of the judgment itself. Equity will not grant relief against judgments entered in a court of law, without some showing of ground for equitable relief—without some showing that the judgment itself is unjust or inequitable.[10] There must be something inherently wrong in the judgment, and the burden rests upon the complaining party to impeach it. He must not only show that the judgment is unconscionable and inequitable, that it was procured by fraud, was the result of accident or mistake, or the act of the opposite party, unmixed with any fault or negligence on his part,[11] but it must be such a judgment as a court of equity, in good conscience, will not permit to be enforced against the complaining party. Mere technical errors, which do not go to the merits of the controversy, committed by the law court on the trial, will not call for the interference of a court of equity. The complainant must allege not only the fraud or the accident, but must set forth a good and meritorious defense to the claim on which the judgment was rendered, by which it is reasonably made to appear that the result would be other or different than that already reached, in the event of a retrial.[12]

A recent decision in Iowa affords an excellent illustration of this.[13] A judgment had been rendered against the defendant in the lower court and within thirty days from its rendition he had requested the official shorthand reporter to certify the testimony

[10] Johnson v. Branch, 48 Ark. 535 (1886); Galbraith v. Barnard, 21 Ore. 67 (1891).

[11] Hollister v. Sobra, 264 Ill. 535 (1914).

[12] Hollister v. White v. Crow, 110 U. S. 183; Combs v. Hamlin Oil Co., 58 Ill. App. 123 (1895).

[13] Bingham v. Clarke, 159 N. W. 172 (Iowa 1916).

in accordance with the statutory requirement where an appeal was desired. This the reporter failed and neglected to do, and the defendant, being thus deprived of his right to appeal through no fault or negligence of his own, sought the relief of equity. The court, in a well considered opinion, refused the relief on the ground that there was no claim made that the defendant did not have a fair and impartial trial, and no facts alleged tending in the least to show that the verdict of the jury was not the result of a fair and impartial deliberation upon the evidence submitted. In other words, there was nothing offered to show that the judgment entered in the lower court was either unjust or inequitable, or that the result would be different from that already reached, in the event that a new trial were granted. There was no concurrence of both the accident complained of and the injustice of the judgment. The complainant had not fulfilled his burden of showing that there was something inherently wrong in the judgment.

The position taken by the court is in accord with the well settled rule enunciated by a long line of decisions, that where a judgment is regular on its face, one who seeks to set it aside or enjoin its collection must set forth a meritorious defense to the original action.[14] And it is also in accord with the fundamental principle of equity, that a party seeking its aid must show some substantial injury. The fraud or accident is, in such cases, a mere technical wrong, and the aid of equity will not be invoked unless in addition to the mere technical wrong, a meritorious defense is shown so that on re-examination and re-trial of the case the result would be different.

P. H. R.

MASTER AND SERVANT—AUTOMOBILES—LIABILITY TO THIRD PERSONS—"COURSE OR SCOPE OF EMPLOYMENT OR AUTHORITY"—The general use of the automobile has led to a constantly increasing volume of litigation on causes of action arising out of its use. Not the least interesting and important class of cases so developed is that dealing with the owner's liability to persons injured by the negligent use of motor vehicles by persons other than the owner.

Two recent cases decided by the Supreme Court of Michigan[1] furnish excellent examples of this class. In *Brinkman* v. *Zucker-*

[14] Brandt v. Little, 47 Wash. 194 (1907), 14 L. R. A. (N. S.) 213; Reed v. N. Y. Nat. Bank, 230 Ill. 50 (1907); Bernhard v. Idaho Bank, 21 Idaho 598 (1912). This rule is universal as to judgments obtained merely by fraud or accident. In cases where the ground of attack on the judgment is want of jurisdiction, as where there is no service of summons, there is some conflict of authority; but the prevailing view is that even there a good defense on the merits must be shown before equity will grant relief. Needle v. Biddle, 32 R. I. 342 (1911); 6 Pomeroy's Eq. Jur., Sec. 667.